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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Dec 28, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CYNTHIA J.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:22-cv-03082-MKD

**ORDER STRIKING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND STIPULATED  
MOTION FOR REMAND AND  
SETTING DEADLINE FOR  
MOTION TO SUBSTITUTE  
PARTY**

**ECF Nos. 11, 14**

Before the Court is Plaintiff's Motion for Summary Judgment, ECF No. 11, and the parties' Stipulated Motion for Remand, ECF No. 14, requesting remand of the above-captioned matter to the Commissioner for additional administrative proceeding pursuant to sentence four of 42 U.S.C. § 405(g). Attorney D. James Tree represents Plaintiff. Attorney Michael Mullen represents Defendant.

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. See LCivR 5.2(c).

1 Plaintiff passed away on September 18, 2021, while the claim was pending  
2 with the Appeals Council. Tr. 15-17. At the administrative level, Plaintiff's  
3 counsel requested Plaintiff's mother be approved as a substitute party. Tr. 15. The  
4 Appeals Council allowed the substitute party and rendered a decision. Tr. 1-6.

5 Plaintiff filed this action with Cynthia J., the deceased, as the named  
6 Plaintiff. ECF No. 1. Neither Plaintiff's Complaint nor the Stipulated Motion to  
7 Remand address the substituted party. *See* ECF Nos. 1, 14. Plaintiff's Motion for  
8 Summary Judgment asserts that Plaintiff's mother "has pursued appeal of the  
9 denial of her daughter's Title II and XVI disability claims." ECF No. 11 at 2.

10 Article III of the United States Constitution limits federal court jurisdiction  
11 to "real controvers[ies] with real impact on real persons." *TransUnion LLC v.*  
12 *Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citation omitted). "[T]he dead lack the  
13 capacities that litigants must have to allow for a true Article III case or  
14 controversy." *See LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943,  
15 953 (9th Cir. 2020). "[A] party cannot maintain a suit on behalf of, or against, or  
16 join, a dead person, or in any other way make a dead person (in that person's own  
17 right, and not through a properly-represented estate or successor) party to a federal  
18 lawsuit." *Id.*

19 There is a circuit court split on whether this jurisdictional defect can be  
20 cured through application of a federal civil procedural rule. *See House v. Mitra*

1     *QSR KNE LLC*, 796 F. App'x 783, 788 (4th Cir. 2019); *Hernandez v. Smith*, 793 F.  
2     App'x 261, 265-66 (5th Cir. 2019); *Fund Liquidation Holdings LLC, et al., v. Bank*  
3     *of America Corp., et al.*, 991 F.3d 370, 386 (2nd Cir. 2021), *cert. denied*, 142 S.Ct.  
4     757 (2022); *Esposito v. United States*, 368 F.3d 1271, 1276-78 (10th Cir. 2004).  
5     The Ninth Circuit has not addressed the issue. *See LN Mgmt., LLC*, 957 F.3d at  
6     955.

7                 At the time this action commenced, Plaintiff did not have standing because  
8     she was deceased. *See id.* at 953. The administrative record indicates Plaintiff's  
9     mother may be an interested party. Tr. 15-17. The death certificate states Plaintiff  
10    was single and never married at the time of her death. Tr. 17.

11                 Although Plaintiff's death does not automatically extinguish Plaintiff's Title  
12    XVI claim, 42 U.S.C. 1383(b)(1)(A) and 20 C.F.R. 416.542(b)(4) preclude  
13    benefits to anyone except a surviving spouse or parents of a disabled or blind child.  
14    Plaintiff does not have a surviving spouse, and Plaintiff did not apply for childhood  
15    benefits. There appears to be no party with any legal interest in Plaintiff's Title  
16    XVI claim. As to Plaintiff's Title II claim, other parties may be entitled to  
17    a deceased claimant's Title II benefits under certain circumstances, such as a  
18    parent. 20 C.F.R. § 404.370.

19                 Assuming, without deciding, substitution is allowable, no real party in  
20    interest has moved for substitution. However, because the administrative record

1 and Plaintiff's Motion for Summary Judgment indicate Plaintiff's mother is  
2 interested in substitution, the Court will set a deadline for the filing a motion to  
3 substitute a party. Any such motion shall fully brief the issue of whether the  
4 substitution of the deceased Plaintiff is permissible to cure the jurisdictional defect  
5 that exists in this case.

6 After consideration, **IT IS HEREBY ORDERED** that:

- 7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, and the  
8 Stipulated Motion to Remand, **ECF No. 14**, are **STRICKEN**.  
9  
10 2. Any motion to substitute party shall be filed no later than **January 27,**  
**2023.** **Failure to timely request substitution may result in the dismissal of the**  
11 **Complaint and the claims therein without prejudice.**

12 The District Court Executive is directed to enter this Order and forward  
13 copies to counsel.

14 DATED December 28, 2022.

15  
16 s/Mary K. Dimke  
MARY K. DIMKE  
17 UNITED STATES DISTRICT JUDGE  
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